

United States District Court  
Eastern District of California

Idowu Olukoya,

Petitioner,

vs.

Immigration and Naturalization  
Service,

Respondent.

No. Civ. S 05-0495 FCD PAN P

Findings and Recommendations

-oOo-

March 11, 2005, petitioner requested this court adjudicate  
his naturalization application.

He alleges he filed a naturalization application in March or  
April 2002, appeared for his initial interview in December 2002  
and was told a second interview would be scheduled. More than  
120 days passed with no determination and thus petitioner  
commenced this action. See 8 U.S.C. § 1447(b) ("If there is a  
failure to make a determination . . . before the end of the 120-

1 day period after the date on which the examination is conducted.  
2 . . the applicant may apply to the . . . district court for a  
3 hearing on the matter.”)

4 April 18, 2005, petitioner filed a notice to serve an  
5 interlocutory injunction prohibiting respondent from conducting  
6 any removal proceedings.

7 June 1, 2005, the court served petitioner’s request for  
8 adjudication and notice re interlocutory injunction on the United  
9 States Attorney and ordered an answer.

10 June 24, 2005, respondent moved to dismiss this proceeding  
11 as moot, on the ground the Citizenship and Immigration Services  
12 division of the U.S. Department of Homeland Security (CIS) denied  
13 petitioner’s application for naturalization June 15, 2005. The  
14 agency purported to deny the application on the ground removal  
15 proceedings against petitioner had commenced April 6, 2005.

16 Section 1447(b) is a jurisdiction-stripping statute granting  
17 this court exclusive jurisdiction over naturalization  
18 applications on which the INS fails to act within 120 days if the  
19 applicant properly invoked the court’s authority. United States  
20 v. Hovsepian, 359 F.3d 1144 (9th Cir. 2004). Thus, it appears  
21 from the present record CIS lacked jurisdiction June 15, 2005,  
22 and thus its “denial” does not render this action moot.

23 Accordingly, the court hereby recommends respondent’s June  
24 24, 2005, motion to dismiss be denied and it be required to file  
25 and serve a response to petitioner’s request for adjudication.

26 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these

1 findings and recommendations are submitted to the United States  
2 District Judge assigned to this case. Written objections may be  
3 filed within 10 days of service of these findings and  
4 recommendations. The document should be captioned "Objections to  
5 Magistrate Judge's Findings and Recommendations." The district  
6 judge may accept, reject, or modify these findings and  
7 recommendations in whole or in part.

8 Dated: November 22, 2005.

9 /s/ Peter A. Nowinski

10 PETER A. NOWINSKI

11 Magistrate Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26